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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,658	01/19/2004	Knud Klingler	41587.012502(346)	9864
29493	7590	01/12/2006	EXAMINER	
HUSCH & EPPENBERGER, LLC 190 CARONDELET PLAZA SUITE 600 ST. LOUIS, MO 63105-3441			EDELL, JOSEPH F	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/760,658	KLINGLER, KNUD	
	Examiner	Art Unit	
	Joseph F. Edell	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 31 October 2005 has been entered.

Claim Objections

2. Claims 32, 35, 37, and 38 are objected to because of the following informalities:
- a. claim 32, line 8, "said connecting webs" should read --each of said connecting webs--;
 - b. claim 35, lines 10-11, "by said lumbar support element" should read --by slots in said lumbar support element--;
 - c. claim 37, line 10, "said connecting webs" should read --each of said connecting webs--;
 - d. claim 38, line 2, "said flap portions are" should read --each of said flap portions is--.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 32-34 and 37-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,954,399 to Hong in view of U.S. Patent No. 6,619,739 B2 to McMillen.

Hong discloses a lumbar support mechanism that is basically the same as that recited in claims 32-34 and 37-47 except that the lumbar support element is not vertically oriented and, as a result, the connecting webs do not form horizontal pivoting axes, as recited in the claims. See Figures 1-7 of Hong for the teaching that the lumbar support mechanism has a lumbar support element 200 (see Fig. 1) being flexible through a range of flexion and including left and right portions 210, an adjustment device 300 operatively engaging the left and right portions such that adjustment of the adjustment device varies the flexion, and two oppositely-oriented flap portions 230 attached to the lumbar support element by two connecting webs that form vertical pivoting axes wherein the lumbar support has a variable resistance that varies through the range of flexion such that increased flexion stiffens the variable resistance of the lumbar support element, the two flap portions being disposed in opposite directions from one another, each of the flap portions defined by a slot in the lumbar support element that is a combination of an open polygon and an open curve, and the flap portions are

integral with the lumbar support element. See column 4, lines 55-66 of Hong for the teaching that the flap portions are formed to surround and support the occupant's waist. McMillen shows a lumbar support mechanism similar to that of Hong wherein the lumbar support mechanism with a lumbar support element 50 (see Fig. 5), an adjustment device 68, and a flap portion 52. See Figure 12 of McMillen for the teaching that the flap portions may be horizontally oriented and/or vertically oriented (column 6, lines 33-47). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lumbar support mechanism of Hong such that the left and right portions of the lumbar support mechanism are upper and lower portions wherein the adjustment device is operatively engaged thereto, and each of the connecting webs forming a horizontal pivoting axis upon the rotation and expansion of the lumbar support element, such as the lumbar support mechanism disclosed in McMillen. One would have been motivated to make such a modification in view of the suggestion in McMillen that the lumbar support mechanisms may be oriented in a great variety of configurations to properly support the thoracic area of the occupant's waist by rotating components 90 degrees and having the components at 180 degrees from one another.

5. Claims 35, 36, and 48-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hong in view of McMillen as applied to claims 32-34 and 37-47 above, and further in view of U.S. Patent No. 5,61,583 to Klingler et al.

Hong, as modified, discloses a lumbar support mechanism that is basically the same as that recited in claims 35, 36, and 48-52 except that the flap portions are not

completely surround by slots in the lumbar support element, as recited in the claims.

See column 3, lines 27-29 of Hong for the teaching that the lumbar support element and flap portions are made an elastic leaf spring material. Klingler et al. show a lumbar support mechanism similar to that of Hong wherein the lumbar support mechanism has a lumbar support element 5 (see Fig. 5) and flap portions 28 that are enclosed by bridge elements 30 of the lumbar support element, and the lumbar support element and flap portions are made of metal or plastic. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made further to modify the lumbar support mechanism of Hong such that the flap portions are completely surrounded by slots in the lumbar support element, and the lumbar support mechanism and flap portions are made of metal or plastic, such as the lumbar support mechanism disclosed in Klingler et al. One would have been motivated to make such a modification in view of the suggestion in Klingler et al. that the bridge elements attach the flap portions to edge and enclose the flap portions, and metal or plastic or suitable resilient materials for the lumbar support mechanism.

Response to Arguments

6. Applicant's arguments with respect to claims 32-52 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joe Edell
January 6, 2006